

Before the State of South Carolina
Department of Insurance

In the matter of:)
)
Carolinas Benefit Administrators of S.C., Inc.)
)
Post Office Box 3257)
Spartanburg, South Carolina 29304)
_____)

SCDI File Number 114691
Consent Order
Imposing Administrative Penalty

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Carolina Benefit Administrators of S.C., Inc., (Carolina Benefit Administrators), a third party administrator, (administrator) licensed to provide third party administrative services within the State of South Carolina.

Carolina Benefit Administrators admits, and I find as fact, that it failed to obtain a written agreement between Employers Life Insurance Corporation (Employers Life) and itself to perform third party administrator services for Employers Life and further that it deceived or dealt unjustly with the citizens of this state by failing to hold the funds of Employers Life in a fiduciary capacity, failing to properly maintain bank records for said funds, and failing to properly disburse said funds in accordance with its fiduciary obligations. These actions are a direct violation of S.C. Code Ann. §§ 38-51-40 (Supp. 2002), 38-51-20 (Supp. 2002) and 38-21-90 (Supp. 2002) and can ultimately lead to the revocation of the administrator's license pursuant to S.C. Code Ann. § 38-51-20 (Supp. 2002) to provide third party administrator services within the State of South Carolina, subject to the administrator's right to a public hearing before the Administrative Law Judge Division.

Prior to a formal hearing before the Honorable Ralph Anderson, Administrative Law Judge, of the South Carolina Administrative Law Judge Division, Carolina Benefit Administrators and the Department agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision. That consensual recommendation was that, in lieu of the Department's proceeding with an action before the Administrative Law Judge Division to revoke Carolina Benefit Administrator's license as a third party administrator within the State of South Carolina, Carolina Benefit Administrators would waive its right to a public hearing, immediately submit an administrative penalty in the total amount of \$35,000 upon the terms and conditions set forth below.

S.C. Code Ann. § 38-51-40 (Supp. 2002) in pertinent part states "No administrator may act as such without a written agreement between the administrator and the insurer, and the written agreement must be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and five years thereafter.

S.C. Code Ann. § 38-51-20 (Supp. 2000) in pertinent part states “[t]he director or his designee may revoke or suspend any license issued to an administrator when he finds that any condition exists which would have prevented the original license, that the administrator has violated any provision of this chapter, or that the administrator has deceived or dealt unjustly with the citizens of this State. ...”

S.C. Code Ann. § 38-51-90 (Supp. 2002) in pertinent part states “ All charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from the insurer must be held by the administrator in a fiduciary capacity. The funds must be immediately remitted to the person entitled thereto or deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited are collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator may not pay any claim by withdrawals from the fiduciary account. Withdrawals from the account may be made, as provided in the written agreement between administrator and the insurer, for (1) remittance to an insurer entitled thereto; (2) deposit in an account maintained in the name of the insurer; (3) transfer to and deposit in a claims-paying account with claims to be paid as provided in § 38-51-100; (4) payment to a group policyholder for remittance to the insurer entitled thereto; (5) payment to the administrator of its commission, fees or charges; or (6) remittance of return premium to the person entitled thereto.”

After a thorough review of the matter, carefully considering the recommendation of the parties, and pursuant to my findings of fact, I hereby conclude as a matter of law that Carolina Benefit Administrators of S.C., Inc did violate S.C. Code Ann. §§ 38-51-40, 38-51-20 and 38-51-90 (Supp. 2002). Although I can now revoke the administrator’s license, I hereby impose an administrative penalty in the amount of \$35,000 against Carolina Benefit Administrators pursuant to the discretion provided to me by the State of South Carolina General Assembly in S.C. Code Ann. § 38-51-20 (Supp. 2002). Twenty-five thousand (\$25,000) dollars of this administrative penalty must be paid within ten days of my date and my signature upon this consent order and the remaining ten thousand (\$10,000) dollars of this penalty must be paid within sixty (60) days of my date and my signature upon this consent order. If these amounts are not paid according to the terms and conditions set forth above, then Carolina Benefit Administrators’ license to transact business as a third party administrator (administrator) within the State of South Carolina will be summarily revoked without any further administrative disciplinary proceedings.

This administrative penalty has been reached by the parties as a result of negotiation and compromise, and in consideration of the internal corrective measures Carolina Benefit Administrators has agreed to take to prevent this problem from recurring and of its assurance that it is and it will in the future comply with South Carolina insurance statutes and regulations. By the signature of one of its officers or authorized representatives upon this consent order, Carolina Benefit Administrators acknowledges that it understands that this administrative disciplinary

order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2002).

Nothing contained within this administrative disciplinary order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110 (Supp. 2002), of the Director of Insurance, exercised either directly or through the Department, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report."

It is, therefore, ordered that Carolina Benefit Administrators of S.C., Inc. shall, within ten (10) days of my date and my signature upon this consent order, pay to the Department an administrative penalty in an initial amount of \$25,000 and an additional amount of \$10,000 within sixty (60) days of my date and my signature for a total amount of \$35,000.

It is further ordered that a copy of this consent order shall be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

This consent order becomes effective on the date of my signature below.



Ernst N. Csiszar
Director

May 1, 2003
Columbia, South Carolina

I CONSENT:



Signature of Authorized Representative

William M. Worthy, II

Name

President

Title

Carolina Benefit Administrators of S.C., Inc.

Post Office Box 3257

Spartanburg, South Carolina 29304

Dated this 7th day of May, 2003